

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
v.) CV NO. 05-CO-8087-E
) CR NO. 93-N-150-E
TAMIKO CANNON)

MEMORANDUM OF OPINION

On November 16, 2005 Tamiko Cannon filed a Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody or Sentenced to Federal Custody pursuant to 28 U.S.C. § 2255. Despite Cannon's assertion to the contrary, she previously filed a § 2255 motion on January 8, 1998 (doc. #240) which was denied on November 30, 1998 (doc. #267). No appeal was taken from the denial of the § 2255 motion.

The motion before this court is therefore a second or successive motion. Title 28 U.S.C. § 2255 provides in pertinent part:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Title 28 U.S.C. § 2244(b)(3)(A) provides:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

In *Hill v. Harper*, 112 F.3d 1088, 1089 (11th Cir.), *cert. denied*, 520 U.S. 1203 (1997) the Court of Appeals for the Eleventh Circuit held that where the petitioner had not applied to it for permission to file a second habeas petition the district court lacked jurisdiction under 28 U.S.C. § 2244(b)(3)(A) to consider petitioner's request for relief.

This action is due to be dismissed for lack of jurisdiction. A separate order consistent with this Memorandum of Opinion will be entered simultaneously herewith.

As to the foregoing it is SO **ORDERED** this the 22nd day of November, 2005.

A handwritten signature in black ink that reads "Sharon Lovelace Blackburn". The signature is written in a cursive, flowing style.

SHARON LOVELACE BLACKBURN
UNITED STATES DISTRICT JUDGE